

Bill No. 39-07
Concerning: Agricultural Land
Preservation – Amendments
Revised: 11-18-08 Draft No. 6
Introduced: December 11, 2007
Enacted: November 18, 2008
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) conform County law concerning the purchase of agricultural easements to the requirements of State law; and
- (2) generally amend County law governing the purchase of agricultural easements.

By ~~[[repealing]]~~ amending

Montgomery County Code
Chapter 2B, Agricultural Land Preservation
~~[[Section 2B-1 through and including 2B-19]]~~

~~[[and re-enacting~~

Montgomery County Code
Chapter 2B Agricultural Land Preservation
Section 2B-1 through 2B-17]]

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. [[Sections 2B-1, through 2B-19 are repealed]] Chapter 2B is amended as follows:

[ARTICLE 1. GENERAL PROVISIONS.]

[2B-1. Definitions.]

[(a) In this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Agricultural board: The agricultural preservation advisory board.

Agriculture: The science or art of cultivating and managing the soil, growing and harvesting crops and other plants, forestry, horticulture, hydroponics, breeding or raising livestock, poultry, fish, game, and furbearing animals, dairying, beekeeping, similar activities, and primary processing on the farm of an agricultural product in the course of preparing it for market. This may or may not cause a change in the natural form or state of the product, but it does not entail operations of a commercial or industrial character that must be regulated so as to preclude adverse external impacts.

County agricultural district: An agricultural district that the council approves.

Easement: A covenant running with the land which limits the use permitted on the property to agricultural and other uses as specified in this chapter.

Foundation: The Maryland Agricultural Preservation Foundation.

Fund: The county agricultural land preservation fund.

Landowner: A person or corporation owning or having an interest in land situated within a state or county agricultural district or proposed to be so situated.

Planning board: The county planning board for Montgomery County.

Productive agricultural land: Land determined to be eligible to be included in a state agricultural district in accordance with regulations promulgated by the foundation.

State agricultural district: An agricultural district established under subtitle 5 of title 2 of the Agricultural Article of the Annotated Code of Maryland.

(b) In this chapter, the following words and phrases have the meanings set forth in subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland:

- (1) Allocated purchases;
- (2) County;
- (3) Eligible county;
- (4) General purchases of easements;
- (5) Matching purchases of easements; and
- (6) Total amount to be allotted.]

[2B-2. Agricultural preservation advisory board; establishment; membership; terms of office; duties and responsibilities.]

[(a) *Generally.* The agricultural preservation advisory board operates under state law to perform the duties and responsibilities set forth below.

(b) *Composition.* The agricultural board consists of five (5) -members appointed by the county executive and confirmed by the county council. Three (3) must be owner-operators of commercial farm land earning fifty (50) percent or more of their income from farming. All members of the agricultural board must be residents of Montgomery County.

(c) *Terms of office.* The original members must be appointed as follows:
 One (1) member must be appointed to a term of three (3) years; two
 (2) members must be appointed to terms of four (4) years; and two (2)
 members must be appointed to terms of five (5) years. Thereafter, the
 terms of office are for five (5) years. A member may not serve more
 than two (2) successive full terms. Appointment to a vacancy must be
 for the remainder of the unexpired term. Members must not be
 compensated for their services, but may be reimbursed for necessary
 expenses.

(d) *Duties and responsibilities.* The agricultural board is assigned the
 following duties and responsibilities as provided under subtitle 5 of
 title 2 of the Agriculture Article of the Annotated Code of Maryland:

- (1) To advise the county governing body with respect to the
 establishment of state and county agricultural districts and the
 approval of purchases of easements by the foundation within
 the county;
- (2) To assist the county governing body in reviewing the status of
 state and county agricultural districts and land under easement;
- (3) To advise the foundation concerning county priorities for
 agricultural preservation;
- (4) To promote preservation of agriculture within the county by
 offering information and assistance to farmers with respect to
 establishment of state and county agricultural districts and
 purchase of easements; and
- (5) In addition to those duties prescribed by state law, the board
 should:

- a. Delineate areas of productive agricultural land in the county.
- b. Recommend to the county executive procedures for mediation or arbitration of disputes as to values of easements being considered for purchase by the county.
- c. Review and make recommendations to the governing body on regulations proposed for state and county agricultural districts, and perform other duties as may be assigned by the county council or county executive.
- d. Prepare and/or review recommendations to the governing body with regard to county policies and programs for agricultural preservation.
- e. Cooperate with the planning board, the cooperative extension service and the soil conservation district in carrying out its responsibilities.]

[2B-3. State agricultural districts; procedures for establishment.]

- [(a) The procedures provided under subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland must be followed with regard to the review of petitions to establish state agricultural districts and the recommendation of the county council to the foundation. The recommendation of the council to the foundation must be by resolution.
- (b) Other agricultural land may be added to a state agricultural district provided the owner applies for the land to be included, the state district meets acreage requirements without inclusion of such land, and each parcel is at least five (5) acres.

- (c) State districts may be established within the ten-year water and sewerage envelope of Montgomery County only if the land is outstanding in productivity and is of significant size.]

[2B-4. Activities and land uses permitted in state districts.]

- [(a) Permitted uses. Notwithstanding any other provisions of this Code, the following activities are permitted in districts in conformance with the county policy that agriculture be the preferred land use in districts:

- (1) Any agricultural use of land.
- (2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products.
- (3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health.
- (4) Sale of farm products produced on the farm where such sales are made.

- (b) Land uses not permitted in districts.

- (1) Subdivision or use for residential, commercial or industrial purposes is not permitted within agricultural districts; provided, however, upon written application to the foundation, conveyance of one (1) acre for the landowner and one (1) acre for each child of the person owning the land at the time the land enters into a district shall be permitted for the construction of the principal residence for the grantee or child and does not constitute residential subdivision for commercial purposes. A landowner within a district may also construct housing for tenants fully engaged in operation of the farm; provided that, in

no case shall the average density of tenant housing exceed one (1) house for each one hundred (100) acres of land in the farm.

(2) Public access or use is not granted by virtue of purchase of an easement by the foundation or the county unless specifically provided for in the easement contract.

(3) Condemnation of any land within a district for public use shall not occur unless other reasonable alternatives do not exist.

(c) Enforcement of regulations.

(1) The Department of Permitting Services enforces this Chapter and any regulations adopted to implement this Chapter.

(2) If, in the enforcement of regulations adopted pursuant to this Chapter, conflict occurs between County laws or regulations concerned with land use, economic activity, noise and environmental controls and regulations adopted pursuant to this Chapter, the agricultural district regulations shall supersede such other conflicting regulations.

(d) Appeals. An aggrieved individual may file an appeal to the County Board of Appeals within 30 days after a decision of the Director of Permitting Services made under this Section.]

[2B-5. Agricultural easements.]

[(a) Purchase of easements by the foundation.

(1) The purchase of easements by the state of either general or matching allotted purchases is governed by, subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland.

(2) Agricultural easements must be recorded in the land records of the county; provided, that recordation of an agricultural easement is not subject to any local transfer tax.

- (b) Additional county payment. If the foundation purchases an easement on land in a state agricultural district, the county may make an additional payment to the landowner of up to fifteen (15) percent of the price of the easement. The county executive must annually establish the percentage used to determine the payment.]

[2B-6. Termination of state easements.]

[Termination of easements purchased in full or in part with state funds must comply with subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland.]

[ARTICLE 11. PURCHASE OF EASEMENTS BY THE COUNTY.]

[2B-7. Eligible land.]

- (a) The county may purchase an easement under this article on land:
- (1) Without establishment of a county agricultural district if it is zoned Rural, Rural Density Transfer, or Rural Cluster; or
 - (2) That is in a county or state agricultural district.
- (b) The county may not purchase an easement under this article on land on which further development is already precluded.
- (c) An owner of land subject to a county easement under this article that is not located in a county agricultural district has the same rights and is subject to the same restrictions as an owner of land located in a county agricultural district.]

[2B-8. Approval of county agricultural districts.]

- (a) Land in a county district must:
- (1) Include at least fifty (50) contiguous acres;
 - (2) Meet USDA soil classification standards I--III or woodland classifications 1 and 2 on at least fifty (50) percent of the acreage; and

(3) Lie outside water and sewer categories 1, 2, and 3. However, the council may establish a county district that includes other land if the council decides it has significant agricultural value and, after considering the recommendation of the master plan for the area, determines that it is in the public interest to establish the county district.

(b) The council may establish conditions to its approval of a county district that it considers in the public interest.]

[2B-9. Procedures to establish a county agricultural district.]

[(a) The council may establish by resolution one (1) or more county agricultural districts.

(b) At the request of an owner of agricultural land, the agricultural board may recommend that the council establish a county agricultural district or include the owner's land in a county agricultural district.

(c) Upon receipt of a request from an owner to establish a county district, the agricultural board must notify any adjacent property owner of the request and of applicable approval procedures. An adjacent property owner must be notified, in writing, of any public hearing on the request.

(d) Within sixty (60) days after receiving a request, the agricultural board must forward a written recommendation to the council. This recommendation may be to:

(1) Approve;

(2) Deny; or

(3) Recommend modification of the request.

(e) Upon receipt of a request of an owner to establish a county district, the agricultural board immediately must forward a copy of that

request to the planning board for review. The planning board must submit written comments to the council within thirty (30) days after receiving the agricultural board's recommendation on the request. The planning board's period for comment may be extended for up to fifteen (15) days.

(f) Within sixty (60) days after receiving comments from the planning board, the council must act on the request.

(g) (1) After receiving the recommendations, the council must hold a public hearing on the request unless it waives this requirement.

(2) The council may extend the period of action by up to one hundred twenty (120) days.

(3) If the council takes no action within the applicable time period, the request is denied.

(h) The council may not include a landowner's property in a county district without the landowner's consent.]

[2B-10. Procedures to terminate a county agricultural district.]

[A landowner may withdraw from a county district by giving notification in writing to the agricultural board and the county council:

(a) No earlier than five (5) years from the date the council includes the owner's land in the district; or

(b) After the county has rejected the purchase of an easement on the landowner's property.

In a county district that contains land from more than one (1) landowner, if a landowner's withdrawal from the district causes the district no longer to meet requirements for a county district, the council may reevaluate the district after receiving the recommendations of the agricultural board and the planning board.]

[2B-11. Use of land in a county agricultural district.]

- 240 [(a) Except as prohibited by the zoning ordinance, these activities are
241 permitted in a county district:
- 242 (1) Any agricultural use of land;
- 243 (2) Operation of any machinery used in farm production or the
244 primary processing of agricultural products, regardless of the
245 time of operation;
- 246 (3) All normal agricultural operations, performed in accordance
247 with good husbandry practices, that do not cause bodily injury
248 or directly endanger human health; and
- 249 (4) Operation of a wayside stand for sale of farm products.
- 250 (b) Subsection (a) does not alter the special exceptions applicable to the
251 zone in which the county district is located under the zoning
252 ordinance.
- 253 (c) A person who owns land that the council has included in a county
254 district must not use or subdivide the land for residential, commercial,
255 or industrial uses. However, a grantor may use no more than:
- 256 (1) One (1) acre, or the minimum lot size required by the zoning
257 and health regulations, whichever is greater, to build a house for
258 use by the grantor;
- 259 (2) One (1) acre, or the minimum lot size required, whichever is
260 greater, to a maximum density of not more than one (1) house
261 per twenty-five (25) acres for each house built, to be occupied
262 by an adult child of the grantor, to a maximum of ten (10)
263 children; and
- 264 (3) The acreage needed to construct housing for tenants fully
265 engaged in the operations of the farm, not to exceed one (1)
266 tenant house per one hundred (100) acres. The owner or the

owner's child must not further subdivide the parcel on which the house is built. The land on which a tenant house is constructed must not be subdivided or conveyed to any person. The tenant house must not be conveyed separately from the original parcel.]

[2B-12. Purchase and value of easements.]

[(a) The county agricultural land preservation fund is created as a special, nonlapsing revolving fund for agricultural land preservation purposes.

It consists of:

- (1) The county's share of the state agricultural transfer tax;
- (2) Easement repurchases and reimbursements; and
- (3) Any other available monies for the purchase of easements under this article.

(b) Monies from the county's share of the state agricultural' transfer tax and any revolving funds must be used for the purposes of this chapter before the expenditure of any other funds.

(c) The county may purchase an easement on real property to preserve agricultural land in the county. To purchase an easement, the county may use:

- (1) Negotiations;
- (2) Competitive bidding; or
- (3) Any other method that is fair and equitable to the owners of agricultural land.

(d) The purchase price may be based on an appraisal or any other evidence of value of the easement that the county is receiving.

(e) Priority for purchasing easements should be based on:

- (1) Price;

- (2) Whether the land is designated in the master plan as agricultural;
- (3) Whether the land borders a municipality or other developing area; and
- (4) Other factors the county executive determines are needed to preserve agricultural land.

(f) The county may, in writing, agree to purchase an easement subject to the condition that an owner;

- (1) Make a good-faith application to the foundation for the purchase of an easement by the state; and
- (2) Accept any foundation offer if its price is equal to or higher than the agreed county price. If the foundation does not agree to purchase an easement subject to a conditional agreement under this subsection, the county must purchase it at the agreed price and may make an additional payment to an owner whose application has been rejected by the foundation in order to compensate for any delay in the state application process that is beyond the control of the applicant. This additional payment should be determined based on an appropriate inflation index, the rate of return, or other relevant factors.

(g) Consistent with this article, the county may establish appropriate terms and conditions for any agreement to purchase an easement or the easement itself. The county may limit the right of the grantor or any successor in interest to apply for a special exception that is inconsistent with the purpose of this article.

- (h) In addition to its authority to purchase easements under this article, the county may accept the donation of an easement or other interest in property for agricultural land preservation purposes.]

[2B-13. Termination and repurchase of easements.]

- [(a) (1) Not earlier than twenty-five (25) years after the county has purchased an easement, an owner may, in writing, ask the county to terminate the easement. Termination may be requested earlier only if the district council zones the land subject to easement in a manner that precludes agricultural uses as a matter of right.
- (2) The council must hold a public hearing within ninety (90) days after receiving a request to terminate an easement unless it waives that requirement. The council must request the advice of the agricultural board and the planning board and notify all people who own land adjacent to the land on which the easement is located.
- (3) Within one hundred eighty (180) days after receiving a request to terminate an easement, the council must decide whether to terminate the easement. The council may extend the time for this decision by not more than ninety (90) days.
- (4) Before granting the request, the council must find that the land is no longer suitable for agriculture and that the public interest would be best served by terminating the easement.
- (5) Within one hundred eighty (180) days after the council agrees to terminate the easement, an owner may repurchase the easement by paying to the fund the difference between the fair

market value and the agricultural value of the land, as determined by an appraisal.

(b) If land under easement is purchased or condemned by the county for park or other nonagricultural uses, the county must transmit funds equal to the present value of the easement to the fund.

(c) An owner who builds a house under section 2B-11(b) of this article must reimburse the fund the pro rata amount that the county paid for the easement on that land.]

[2B-14. Right to sell.]

[This article does not restrict the right of an owner to sell land located in a county agricultural district or land on which the county holds an easement.]

[2B-15. Public access.]

[Purchase of an easement by the county does not create a right of public access to the land unless the easement contract specifically provides for public access.]

[2B-16. Easements on county-owned farmland.]

((a) Productive agricultural lands sold by the county must be sold with an easement attached where the easement is consistent with the general plan of Montgomery County as amended by applicable master plan.

(b) Productive agricultural lands purchased by the county in pursuit of farmland preservation goals may be resold only for private agricultural uses and subject to an easement.]

[2B-17. Recordation.]

[The county must record an easement in the land records of the county. The recordation of an easement is not subject to any county transfer or recordation tax.]

[2B-18. Executive regulations.]

371 [(a) Within four (4) months after this article becomes effective, the county
372 executive must adopt regulations under method (1) to implement this
373 article.

374 (b) The regulations must include:

- 375 (1) Method of easement valuation;
- 376 (2) Method of purchasing easements;
- 377 (3) Terms of payment for easements; and
- 378 (4) Method of ranking offers to sell easements.]

379 **[2B-19. Administration and conflict.]**

380 [(a) The funds to administer any agricultural land preservation program
381 may be paid from the fund and any other monies the Council
382 appropriates.

383 (b) The Department of Economic Development must administer this
384 Article and the regulations under it.

385 (c) The Department of Economic Development must issue a public
386 annual report on this program.

387 (d) (1) If a conflict occurs between the provisions of this Article and
388 County laws on economic activity, noise, or environmental
389 controls, this Article supersedes the conflicting laws.

390 (2) If a conflict occurs between the enforcement of regulations
391 adopted under this Article and County regulations on economic
392 activity, noise, or environmental controls, the regulations
393 adopted under this Article supersede the conflicting
394 regulations.]

395 **[[Sec. 2. Sections 2B-1 through 2B-17 are re-enacted as follows:]]**

396 **ARTICLE 1. GENERAL PROVISIONS.**

397 **2B-1. Definitions.**

In this Chapter, the following words and phrases have the meanings indicated:

Agricultural Board or **APAB** means the County Agricultural Preservation Advisory Board.

Agricultural Easement means a covenant running with the land that restricts the uses permitted on the property to agricultural and other uses as specified in this Chapter.

Agriculture means:

- (1) the business, science, and art of cultivating and managing the soil;
- (2) composting, growing, harvesting, and selling crops and livestock, and the products of forestry, horticulture, and hydroponics;
- (3) breeding, raising, or managing livestock, including horses, poultry, fish, game, and fur-bearing animals, dairying, beekeeping and similar activities; and
- (4) equestrian events and activities.

Agriculture includes processing an agricultural product on the farm [[of an agricultural product]] in the course of preparing the product for market, [[and]] which may or may not cause a change in the natural form or state of the product.

Agriculture Article means the Agriculture Article of the Maryland Code.

Buildable Lot means a parcel of land on which the owner has retained the right to build a principal dwelling.

Department means, unless otherwise specified, the County Department of Economic Development.

Farm Market means [[the display and retail sale from a farm of agricultural products produced:

- (1) on the farm where the farm market is located; or

(2) on another farm under the control of the owner or operator of the farm market.]] a farm market as defined in Chapter 59.

[[A **farm market** includes the display and sale of farm food products certified as non-potentially hazardous by the Department of Health and Human Services.]]

Foundation means the Maryland Agricultural Land Preservation Foundation.

Fund means the County's Agricultural Land Preservation Fund.

Landowner means a fee simple owner of land located in [[the State or]] the County on which a landowner proposes to sell or has sold an agricultural easement to the State or the County.

Planning Board means the Montgomery County Planning Board.

Principal Dwelling means a residential structure on farm property [[serving]] which serves as the property's primary residence.

Productive Agricultural Land means land eligible to be included in an agricultural easement under County or Foundation regulations.

Significant Agricultural Resource or **Significant Agricultural Capability** means land which, if properly agronomically managed and under normal growing conditions, the Department [[of Economic Development]], after consulting local agricultural support agencies, finds can sustain a profitable farm enterprise.

State Agricultural [[Easements]] Easement means [[easements]] an easement established under Subtitle 5 of Title 2 of the Agriculture Article.

Tenant House means a residential structure on land under an agricultural easement that serves as an accessory use to the principal dwelling.

2B-2. Agricultural Preservation Advisory Board[; establishment; membership; terms of office; duties and responsibilities]].

(a) Generally. The Agricultural Preservation Advisory Board is established under Subtitle 5 of Title 2 of the Agriculture Article.

(b) Composition.

(1) The County Executive must appoint, subject to confirmation by the County Council, 5 members to the APAB.

(2) 3 members must be owner-operators of commercial farm land and earn at least 50% of their income from farming.

(3) Each member must be a resident of the County.

(c) Terms of office.

(1) The term of each member is 5 years.

(2) A member must not serve more than 2 consecutive full terms. An appointee to fill a vacancy before a term expires serves the rest of the unexpired term.

(3) A member serves without compensation. However, a member may request reimbursement for mileage and dependent care costs at rates established by the County.

(d) Duties and responsibilities.

(1) As required by Subtitle 5 of Title 2 of the Agriculture Article, the APAB must:

(A) advise the County on the purchase of State and County agricultural easements;

(B) assist the County in reviewing the status of agricultural land, including farming productivity under State and County agricultural easements;

(C) advise the Foundation concerning County priorities for agricultural preservation; and

(D) promote preservation of agriculture in the County by offering information and assistance to landowners on the purchase of State and County agricultural easements.

(2) The APAB may:

(A) delineate areas of productive agricultural land in the County;

(B) recommend to the Executive procedures to mediate or arbitrate disputes on the value of agricultural easements which the County may buy;

(C) review and make recommendations on regulations regarding State and County agricultural easements;

(D) recommend County policies and programs to preserve agriculture;

(E) cooperate with the Planning Board, the Cooperative Extension Office, and the Soil Conservation District in carrying out its responsibilities; and

(F) perform other duties the County Executive assigns.

ARTICLE 2. STATE EASEMENTS.

2B-3. State Easement Application and Purchase [[Guidelines]].

(a) A landowner seeking to place land under an agricultural easement must file a petition with the APAB requesting an application for the purchase of an easement by the Foundation.

(b) The APAB must advise the County Council whether the applicant's land meets the qualifications established by the Foundation and recommend whether the Foundation should buy an agricultural easement.

- (c) The APAB must refer the application to the Planning Board. The Planning Board must advise the [[County]] Council if:
- (1) the proposed agricultural easement is compatible with existing and approved County plans and overall policy; and
 - (2) the Planning Board recommends buying an agricultural easement on the applicant's land.
- (d) If either the APAB or the Planning Board recommends approval, the County Council must hold a public hearing on the proposed easement. [[Adequate]] The Department must give adequate notice of the hearing [[must be given]] to the owner of any land adjacent to the proposed agricultural easement.
- (e) The Council must decide if the application for the proposed agricultural easement should be recommended to the Foundation for approval.
- (1) If the Council recommends approval of the application, the Council must notify and forward to the Foundation its recommendation and relevant information about the proposed easement, including the recommendations of the APAB and the Planning Board.
 - (2) If the Council recommends denial of the application, the Council must notify the Foundation and the landowner of its decision.
- (f) The Foundation may approve an application for a proposed agricultural easement only if:
- (1) the land in the proposed agricultural easement meets the following qualifications established by the Foundation:

- 530 (A) any productivity, acreage, and locational criteria
 531 necessary to continue farming;
 532 (B) the land must be at least 50 acres; and
 533 (C) any other eligibility requirement in Subtitle 5 of Title 2
 534 of the Agriculture Article;
 535 (2) the Council recommended approval of the proposed easement;
 536 and
 537 (3) a majority of the Foundation's Board of Trustees approves
 538 buying the proposed easement.
 539 (g) [[Additional County payment.]] If the Foundation buys an agricultural
 540 easement, the County may make an additional payment to the
 541 landowner of up to 15% of the State's purchase price of the easement
 542 under regulations issued under this Chapter. The Executive must
 543 specify the percentage used to determine the payment each year and
 544 publish that number in the County Register.
 545 (h) [[Procedures.]]
 546 (1) The procedures governing State agricultural easements,
 547 including the application process, the maximum value of any
 548 easement bought, the source of funds to buy an easement, and
 549 the restrictions required in easements, are contained in Subtitle
 550 5 of Title 2 of the Agriculture Article and the regulations issued
 551 under Subtitle 5 of Title 2.
 552 (2) If any conflict arises between this Chapter and its regulations
 553 and Subtitle 5 of Title 2 and its regulations, the State law and
 554 State regulations govern.
 555 (i) [[Each]] The Department must work with the State to record each
 556 State agricultural easement [[must be recorded]] in the County land

records. The recordation of a State agricultural easement is not subject to any County recordation or transfer tax.

2B-4. Activities and uses permitted on land [[encumbered by]] under a State easement.

(a) *Permitted uses.* The following activities are permitted on land [[encumbered by]] under a State agricultural easement:

- (1) any agricultural use of land;
- (2) operation at any time of any machinery used in farm production or the primary processing of agricultural products;
- (3) any normal agricultural operation performed in accordance with good husbandry practices which does not cause bodily injury or directly endanger human health; and
- (4) sale of farm products [[produced on the farm where the product is sold]] at a farm market.

(b) *Uses not permitted; release.* [[The following activities are not permitted on land encumbered by a State agricultural easement:]]

- (1) [[Subdivision or use]] Land under a State agricultural easement must not be subdivided or used for residential, commercial, or industrial purposes. However, the Foundation may approve, after receiving a written application, the release of any easement restriction for:

- (A) the landowner who originally sold the easement, to use 1 acre or less to build [[a]] one or more dwelling [[house to be occupied by]] houses for the use only of that landowner or a child of the landowner, up to a maximum of 3 lots, subject to the requirements in Subtitle 5 of Title 2 of the Agriculture Article; and

(B) a landowner to build housing for one or more tenants who are fully engaged in operating the farm if the landowner meets the following requirements:

(i) the use must not exceed 1 tenant house for each 100 acres, unless the Foundation allows an exception in a case of compelling need;

(ii) the land where a tenant house is located must not be subdivided or conveyed to any person;

(iii) the tenant house must not be conveyed separately from the original parcel; and

(iv) any other requirement in Subtitle 5 of Title 2 of the Agriculture Article.

(2) Purchase of an agricultural easement by the Foundation does not grant the public any right of access or right to use the land included under the easement.

(3) Any land [[encumbered by]] under a State agricultural easement [[for public use]] must not be condemned for public use unless no other reasonable alternative is available.

2B-5. Landowner rejection of offer to purchase easement.

A landowner who rejects an offer by the Foundation to buy a State agricultural easement on the same land for 2 consecutive years, for a reason other than that sufficient State or County funds are not available to buy the easement, must not reapply to sell an agricultural easement on the same land for the next 2 consecutive years.

2B-6. Termination of State easements.

(a) The Foundation and the County must approve the termination of any agricultural easement bought in full or in part with State funds. Any

termination must comply with Subtitle 5 of Title 2 of the Agriculture Article.

- (b) The Foundation must hold [[in perpetuity]] a State agricultural easement in perpetuity if the State Board of Public Works approved the purchase of the easement on or after October 1, 2004.

ARTICLE 3. COUNTY EASEMENTS.

2B-7. County Easement Application and Purchase [[Guidelines]].

- (a) A landowner seeking to place land under an agricultural easement must submit an easement sales application to the Department of Economic Development. The application must include a completed property description and specify the landowner's asking price.

- (b) The County may buy an agricultural easement under this Article:

- (1) on land located in the Rural, Rural Density Transfer, or Rural Cluster zones; or
- (2) on land located in another zone if[[:]] the land meets all requirements of subsection (e).

[[(A) placing an agricultural easement on that land is in the public interest; and

(B) the Department concludes, after consulting local agricultural support agencies, that the land has significant agricultural resources.]]

- (c) The County [[may]] must not buy an easement under this Article if further development is already precluded on that land.

- (d) The County may buy an agricultural easement under this Article if the land:

- (1) is at least 50 contiguous acres;

- (2) meets United States Department of Agriculture's soil classification standards I, II, or III, or woodland classifications 1 and 2 on at least 50% of the acreage, as outlined in the Soil Survey for Montgomery County; and
- (3) is located outside water and sewer categories 1, 2, and 3, as defined in the County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan.

(e) If any land does not meet all requirements of subsection (d), the County must not buy a County agricultural easement on that land unless:

- (A) the Department finds that placing an agricultural easement on that land is in the public interest; and
- (B) the Department concludes, after consulting local agricultural support agencies, that the land has significant agricultural resources.

2B-8. Activities and uses permitted on land [[encumbered by]] under a County agricultural easement.

(a) Permitted Uses. Except as prohibited by Chapter 59 or the terms of an agricultural easement, the following activities are permitted on land [[encumbered by]] under a County agricultural easement:

- (1) any agricultural use of land;
- (2) operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- (3) any normal agricultural operation, performed in accordance with good husbandry practices, that does not cause bodily injury or directly endanger human health; and

(4) operation of a farm market [[to sell farm products under the following conditions.

(1) No more than 25 percent of the farm market display and sales area may be used to display and sell agricultural products not produced on the farm under the control of the owner or operator of the farm market.

(2) If any crop failure is due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the farm market, the Department of Permitting Services, after receiving a recommendation from the Department of Economic Development and the Agricultural Advisory Committee, may allow more than 25 percent of the farm market display and sales area to be used for agricultural products not produced on the farm where the farm market is located for a limited period of time]].

(b) *Relation to special exceptions.* Subsection (a) does not alter either the requirements in Chapter 59 for a special exception applicable to the zone where a County easement is located or the process to obtain a special exception. However, [[the County]] an agricultural easement may expressly limit the right of the landowner or any successor in interest to apply for a special exception that is inconsistent with the purposes of this Article.

(c) *Uses not permitted; release.* [[The following activities are not permitted on land encumbered by a County agricultural easement.]]

(1) [[Subdivision or use]] Land under a County agricultural easement must not be subdivided or used for any residential,

commercial, or industrial purpose. However, the landowner may obtain a release from an agricultural easement for:

(A) 1 acre, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build a house for use by the landowner; and

(B) up to 3 1-acre lots, or the minimum lot size required by Chapter 59 or applicable well and septic regulations, whichever is greater, to build houses to be occupied by adult children of the landowner at a maximum density determined by the size of the land under easement and the following calculations:

(i) 1 lot for the first 25 acres;

(ii) 2 lots for land under easement greater than 50 acres but less than 120 acres; and

(iii) 3 lots for land under easement that is greater than 120 acres.

(2) (A) Any release issued under this Section must include[[:]

[(A)] a [[statement]] requirement that the landowner or the child, whichever is appropriate, must not transfer the lot released from an agricultural easement for 5 years after the release is recorded in the County land records[[],] unless:

(i) the APAB approves the transfer; or

(ii) the lot is subject to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.

(B) Noncompliance with subparagraph 2(A) is a violation of this Chapter and the agricultural easement, and may result in legal action to prevent the transfer or to obtain the proceeds of any sale collected by the landowner or the child if an unapproved transfer occurs.

(3) If land proposed for an agricultural easement does not contain a habitable dwelling house, the landowner [[of the proposed agricultural easement]] may, as part of the application, request the right, which would run with the land, to build one single family dwelling house if:

(A) no viable residential structure exists on the land when the easement is bought;

(B) the [[agricultural]] easement requires that the residential structure must never be subdivided from the easement property; and

(C) the [[agricultural]] easement requires that the right to build a single family dwelling precludes the release of any lot from the easement for the landowner's children.

(4) A landowner may build housing for one or more tenants fully engaged in operating the farm. However:

(A) not more than one tenant house may be built for each 100 acres of land under easement;

(B) the land on which a tenant house is located must not be subdivided or conveyed to any third party;

(C) the tenant house must not be conveyed separately from the original parcel of land under the [[agricultural]] easement; and

(D) the square footage of the tenant house must not exceed the square footage of the principal dwelling on the land under the easement.

(d) Reimbursement. A landowner who obtains a release of a lot from an agricultural easement must first reimburse the Fund by an amount equal to the pro-rata purchase price the County paid for the [[agricultural]] easement. The [[County]] County Attorney must, after [[receiving the funds]] the Fund is reimbursed, execute and record a partial release in the County land records.

2B-9. Purchase and value of agricultural easements.

(a) The Fund is a special, non-lapsing revolving fund for agricultural land preservation purposes. It consists of:

- (1) the County's share of the State agricultural transfer tax;
- (2) payments received by the County for the repurchase, release, reimbursement, and termination of an agricultural easement;
and
- (3) any other funds available to buy agricultural easements under this Article.

(b) The County must use funds from the County's share of the State agricultural transfer tax and any other revolving funds for the purposes of this Article before using any other County funds for these purposes.

(c) The County may buy an agricultural easement to preserve agricultural land in the County. To buy an easement, the County may use:

- (1) negotiations;
- (2) competitive bidding; or

(3) any other method that is fair and equitable to the landowner and the County.

(d) The purchase price may be based on an appraisal or any other evidence of value under criteria in applicable regulations.

(e) Priority for buying easements must be given to any applicant who meets all of the following criteria:

(1) the proposed purchase price for the agricultural easement does not exceed either the appraised fair market value of the easement or a commercially reasonable value for the easement;

(2) the land is designated in the applicable master plan as agricultural;

(3) the land borders a municipality or other developing area and is likely to be developed in the foreseeable future; and

(4) any other [[factors]] factor the Executive finds necessary to preserve agricultural land.

(f) The County Executive or the Executive's designee may agree in writing to buy an agricultural easement if the landowner:

(1) files a good-faith application to the Foundation for the purchase of an agricultural easement by the State; and

(2) accepts a Foundation offer if the price offered by the Foundation is equal to or higher than the price the County offered. If the Foundation does not agree to buy an easement subject to a conditional agreement under this subsection, the County must buy the easement at the price the County offered under the conditional agreement.

(g) In addition to its authority to buy agricultural easements under this Article, the County may accept the donation of an agricultural

easement or another interest in property for agricultural land preservation purposes.

2B-10. Termination and repurchase of agricultural easements.

(a) Process to Terminate and Repurchase an Easement.

(1) [[A]] Except as provided in subsection (c), a landowner may, in writing, at least 25 years after an agricultural easement bought by the County has been recorded in the County land records, request the County Council to terminate the agricultural easement. However, a landowner may request termination earlier if the land under easement is later zoned in a manner that precludes agricultural use as a matter of right.

(2) In [[reviewing]] approving a termination request, the County Council must find that the land is no longer suitable for agriculture and the public interest would be best served by terminating the easement.

(3) The landowner must submit an explanation, in a form acceptable to the [[County]] APAB, why profitable farming is no longer feasible on the land under easement.

(4) The APAB must [[conduct]] determine if profitable farming is feasible on the land and issue a written recommendation to the [[Director of Economic Development]] Department. In determining whether farming is profitable, the APAB must consider:

(A) if the landowner has implemented a Soil Conservation and Water Quality Plan;

(B) the location of the farm with respect to development; and

(C) any other non-agricultural use that would otherwise impact profitability of the farm.

(5) After the APAB [[completes]] issues its [[inquiry]] recommendation, the Department must advise the landowner [[must be advised]] that the Department must order an appraisal of the land [[must be conducted]] at the landowner's expense. The appraisal must consider the current fair market value of land and the current fair market value of the land encumbered by an agricultural easement. The difference between these values must represent the present value of the agricultural easement.

(6) The landowner must pay the [[County]] Department for the cost of an appraisal. The Department must order the appraisal after receiving the funds from the landowner.

(7) After receiving the completed appraisal and APAB's recommendation, the County Council must hold a public hearing on the request to terminate the agricultural easement. The Department must notify each owner of land adjacent to the land where the easement is located of the public hearing.

(8) After the public hearing, the Council, by majority vote, must recommend to the Executive whether the Executive should agree to terminate the easement.

(9) If the Executive agrees to terminate the easement, the landowner must repurchase the easement by paying the present value of the easement as defined in this Section.

(10) The landowner must pay the required payment to the County within 180 days after the Executive agrees to terminate the

easement. After receiving the required payment, the [[County]] Department must prepare, execute, and deliver to the landowner for recording, a Deed of Termination and Release from Easement.

(11) If a request for termination is denied, or if the landowner does not repurchase the easement within 180 days after the Executive agrees to terminate the easement, the landowner must not request termination of the easement for 5 years after the Executive agreed or disagreed to the landowner's last request for termination.

(b) Easement Properties Purchased or Condemned by Government. If the federal government or the State or County buys or condemns land under an agricultural easement for park or any other nonagricultural use, the condemning authority must pay the present value of the easement to the Fund. After [[receiving the funds]] the Fund has received all payments due, the County Attorney must prepare, execute, and deliver to the condemning authority for recording, a Deed of Termination and Release from Easement.

(c) No termination. The County must not terminate and repurchase any agricultural easement which the County bought after December 31, 2008.

2B-11. Right to sell.

This Article does not restrict the right of a landowner to sell land [[on encumbered by]] under a County agricultural easement.

2B-12. Public access.

The purchase of an agricultural easement by the County does not grant the public any right of access or right to use the land unless the easement expressly allows public access.

2B-13. Easements on County-owned farmland.

[[Any]] The County must not sell any productive agricultural land that the County owns [[must not be sold]] until an agricultural easement is recorded [[[against the land]] to preserve the land for agricultural use.

2B-14. Recordation.

(a) The County Attorney must record each agricultural easement in the County land records. The recordation of an agricultural easement is not subject to any County transfer or recordation tax.

(b) Each agricultural easement must:

(1) be recorded in the form required by the Department;

(2) run with the land and bind the landowner and each assignee, transferee, mortgagee, and any other party who obtains title to the property; and

(3) be recorded so that the easement is senior in priority to all liens, including any instrument securing permanent financing.

(c) Each deed that transfers title to land on which an agricultural easement is recorded must:

(1) be a two-party deed; and

(2) expressly state that the property is subject to an agricultural easement and cite the recorded easement.

ARTICLE 4. BUILDING LOT TERMINATION EASEMENTS.

2B-15. Authority and Purpose.

(a) A building lot termination (BLT) easement is a form of agricultural easement that generally terminates [[all]] remaining development rights [[and specifically extinguishes any remaining]] by extinguishing the right to build a dwelling unit on an eligible buildable lot.

(b) The County Executive or a designee may create and buy building lot termination easements to achieve the goals of the County Preservation of Agriculture and Rural Open Space Functional Master Plan to preserve remaining farmland in, prevent the further fragmentation of, and minimize residential use of the Agricultural Reserve.

2B-16. Requirements for BLT easement.

(a) Except as expressly provided in this Article, Article 3 applies to any BLT easement.

(b) A BLT easement may only be created on a buildable lot which is:

- (1) located in the Rural Density Transfer (RDT) zone;
- (2) zoned for residential density no higher than one dwelling unit per 25 acres; and
- (3) capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A and applicable regulations issued under that Chapter.

(c) Notwithstanding Section 2B-7(d)(1), a BLT easement may be created on a buildable lot smaller than 50 contiguous acres.

(d) In addition to the application process in Section 2B-7, the County may accept a gift of a BLT easement.

(e) The County must be the grantee of each BLT easement.

(f) Notwithstanding any other provision in this Chapter:

- (1) each BLT easement, once created, must not expire or be terminated;
- (2) land under a BLT easement must not be subdivided or used for any residential, commercial, or industrial purpose unless the BLT easement expressly allows that subdivision or use; and

(3) land under a BLT easement may contain non-residential accessory agricultural uses and structures, subject to the terms of each easement.

2B-17. BLT Account.

(a) The Department must create a separate account under the Fund, entitled the BLT Account.

(b) The BLT Account must contain payments made to comply with conditions of approval which the Planning Board has imposed for certain development plans, and may also contain funds received through donation, appropriation, bond proceeds, or any other source.

(c) Funds in the BLT Account must be spent only on BLT easements. Funds in the BLT Account may be used in conjunction with other funds to buy BLT easements.

ARTICLE 5. ADMINISTRATION.

[[2B-15]] 2B-18. [[Executive regulations]] Regulations.

(a) The County Executive must issue regulations under Method 1 to implement this [[Article]] Chapter.

(b) The regulations must [[include]] specify the:

(1) method of easement valuation;

(2) method of buying easements;

(3) terms of payment for easements; and

(4) method of ranking offers to purchase easements.

[[2B-16]] 2B-19. Administration.

(a) The [[funds to administer]] costs of any agricultural land preservation program, including the purchase of any agricultural easement, may be paid from the Fund and any other appropriated funds.

(b) The Department [[of Economic Development]] must administer this
[[Article]] Chapter and the regulations issued under it.

(c) The Department must issue an annual report that identifies the:

- (1) number and types of agricultural easements bought;
- (2) number of acres preserved by those easements; and
- (3) price of each easement.

[[ARTICLE 4. ENFORCEMENT OF STATE AND COUNTY
AGRICULTURAL EASEMENTS.]]

[[2B-17]] 2B-20. Enforcement of State and County Agricultural Easements.

(a) Any violation of this Chapter or regulations issued under it is a Class
A violation. The Department of Permitting Services may issue a
citation for any violation of this Chapter or the terms of any
agricultural easement.

(b) The Director of Economic Development may take legal action,
including seeking injunctive or declaratory relief, to prevent any:

- (1) subdivision of land under an agricultural easement that violates
this Chapter or an agricultural easement; or
- (2) transfer of land, including the transfer of lots to or for the
landowner or the landowner's children, that violates this
Chapter or an agricultural easement.

(c) The Director may also take legal action to recover any funds obtained
from any subdivision or land transfer that violates this Chapter or an
agricultural easement, plus costs and a reasonable attorney's fee.

[[c)]] (d) If [[a conflict occurs between]] the creation of an easement under
this [[Article and]] Chapter conflicts directly with any County law
regulating economic activity, noise, or environmental controls, the
easement created under this [[Article]] Chapter prevails.

983 [[d]] (e) If [[a conflict occurs between the enforcement of]] the creation of
 984 an easement under any regulation issued under this [[Article and]]
 985 Chapter conflicts directly with any applicable County regulation on
 986 economic activity, noise, or environmental controls, the [[regulation
 987 issued]] easement created under this [[Article]] Chapter prevails.

988 *Approved:*

989 _____
 Michael J. Knapp, President, County Council Date

990 *Approved:*

991 _____
 Isiah Leggett, County Executive Date

992 *This is a correct copy of Council action.*

993 _____
 Linda M. Lauer, Clerk of the Council Date